

TITLE 48
MONOPOLIES AND TRADE PRACTICES

CHAPTER 6
CONSUMER PROTECTION ACT

48-601. SHORT TITLE AND PURPOSE. This act shall be known and may be cited as the "Idaho consumer protection act". The purpose of this act is to protect both consumers and businesses against unfair methods of competition and unfair or deceptive acts and practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection. It is the intention of the legislature that this chapter be remedial and be so construed.

[48-601, added 1971, ch. 181, sec. 2, p. 847; am. 1990, ch. 273, sec. 1, p. 767.]

48-602. DEFINITIONS. As used in this act:

(1) "Person" means natural persons, corporations both foreign and domestic, trusts, partnerships both limited and general, incorporated or unincorporated associations, companies, trusts, business entities, and any other legal entity, or any other group associated in fact although not a legal entity or any agent, assignee, heir, employee, representative or servant thereof.

(2) "Trade" and "commerce" mean the advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services or distributing goods or services, either to or from locations within the state of Idaho, or directly or indirectly affecting the people of this state.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription or other tangible document or recording.

(4) "Examination" of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(5) "Appropriate trade premises," mean premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises.

(6) "Goods" mean any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situated, including certificates or coupons exchangeable for such goods.

(7) "Services" mean work, labor or any other act or practice provided or performed by a seller to or on behalf of a consumer.

(8) "Actions or transactions permitted under laws administered by a regulatory body or officer" mean specific acts, practices or transactions authorized by a regulatory body or officer pursuant to a contract, rule or regulation, or other properly issued order, directive or resolution.

(9) "Regulatory body or officer" means any person or governmental entity with authority to act pursuant to state of Idaho or federal statute.

[48-602, added 1971, ch. 181, sec. 3, p. 847; am. 1973, ch. 285, sec. 1, p. 601; am. 1993, ch. 102, sec. 1, p. 256.]

48-603. UNFAIR METHODS AND PRACTICES. The following unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared to be unlawful, where a person knows, or in the exercise of due care should know, that he has in the past, or is:

- (1) Passing off goods or services as those of another;
- (2) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
- (3) Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
- (4) Using deceptive representations or designations of geographic origin in connection with goods or services;
- (5) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, connection, qualifications or license that he does not have;
- (6) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or secondhand;
- (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
- (8) Disparaging the goods, services, or business of another by false or misleading representation of fact;
- (9) Advertising goods or services with intent not to sell them as advertised;
- (10) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;
- (11) Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
- (12) Obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed;
- (13) Failing to deliver to the consumer at the time of the consumer's signature a legible copy of the contract or of any other document which the seller or lender has required or requested the buyer to sign, and which he has signed, during or after the contract negotiation;
- (14) Making false or misleading statements of fact concerning the age, extent of use, or mileage of any goods;
- (15) Promising or offering to pay, credit or allow to any buyer or lessee, any compensation or reward in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease;
- (16) Representing that services, replacements or repairs are needed if they are not needed, or providing services, replacements or repairs that are not needed;
- (17) Engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer;

(18) Engaging in any unconscionable method, act or practice in the conduct of trade or commerce, as provided in section [48-603C](#), Idaho Code, provided, however, that the provisions of this subsection shall not apply to a regulated lender as that term is defined in section [28-41-301](#), Idaho Code;

(19) Taking advantage of a disaster or emergency declared by the governor under [chapter 10, title 46](#), Idaho Code, or the president of the United States under the provisions of the disaster relief act of 1974, 42 U.S.C. section 5121 et seq., by selling or offering to sell to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price; provided however, this subsection shall apply only to the location and for the duration of the declaration of emergency. In determining whether a price is exorbitant or excessive, the court shall take into consideration the facts and circumstances including, but not limited to:

(a) A comparison between the price paid by the alleged violator for the fuel, food, pharmaceuticals, or water and the price for which the alleged violator sold those same items to the ultimate consumer immediately before and after the period specified by the disaster or emergency declaration;

(b) Additional costs of doing business incurred by the alleged violator because of the disaster or emergency;

(c) The duration of the disaster or emergency declaration.

Notwithstanding anything to the contrary contained elsewhere in the act, no private cause of action exists under this subsection.

[48-603, added 1971, ch. 181, sec. 4, p. 847; am. 1973, ch. 285, sec. 2, p. 601; am. 1990, ch. 273, sec. 2, p. 767; am. 2002, ch. 358, sec. 1, p. 1016; am. 2002, ch. 361, sec. 2, p. 1019; am. 2013, ch. 54, sec. 16, p. 122.]

48-603A. UNFAIR SOLICITATION PRACTICES. (1) It is unlawful for any person to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following:

(a) Stating the identity of the person making the solicitation;

(b) Stating the trade name of the person represented by the person making the solicitation;

(c) Stating the kind of goods or services being offered for sale;

(d) And, in the case of an "in person" contact, the person making the solicitation shall, in addition to meeting the requirements of paragraphs (a), (b) and (c) of this section, show or display identification which states the information required by paragraphs (a) and (b) of this section as well as the address of the place of business of one (1) of such persons so identified.

(2) It is unlawful for any person, in soliciting a sale or order for the sale of goods or services at other than his appropriate trade premises, in person or by telephone, to use any plan, scheme, or ruse which misrepresents his true status or mission for the purpose of making such sale or order for the sale of goods or services.

(3) It is unlawful in the sale or offering for sale of goods or services for any person conducting a mail order or catalog business in this state and utilizing a post office box address to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms.

[48-603A, added 1973, ch. 285, sec. 3, p. 601.]

48-603B. UNFAIR TAX RETURN PREPARATION PRACTICES. (1) As used in this section, unless the context otherwise requires:

(a) "Tax preparer" means a person who, for a fee, engages in the business of assisting with, or preparing, federal, state, or local government income tax returns.

(b) "Fee" means any moneys or valuable consideration paid or promised to be paid for services rendered or to be rendered by any person or persons functioning as or conducting the business of a tax preparer.

(2) The following acts or omissions related to the conduct of the business of the tax preparer, which are done by the tax preparer or any employee, partner, officer, or member of the tax preparer are unlawful:

(a) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading.

(b) Causing or allowing a consumer to sign any document in blank relating to a tax return thereof.

(c) Failing or refusing to give to a consumer a copy of any document requiring his signature, as soon as the consumer signs such document.

(d) Failing to maintain a copy of any tax return prepared for a consumer for the applicable statute of limitation period on federal tax returns and state tax returns.

(e) Making false promises of a character likely to influence, persuade, or induce a consumer to authorize the tax preparation service.

(3) (a) It is unlawful for any person, including an individual, firm, corporation, association, partnership, joint venture, or any employee or agent therefor, to use or disclose any information obtained in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns unless such use or disclosure is within any of the following:

(i) Consented to in writing by the taxpayer in a separate document.

(ii) Expressly authorized by state or federal law.

(iii) Necessary to the preparation of the return.

(iv) Pursuant to court order.

(b) For the purposes of this section, a person is engaged in the business of preparing federal or state income tax returns or assisting taxpayers in preparing such returns if he does either of the following:

(i) Advertises, or gives publicity to the effect that he prepares or assists others in the preparation of state or federal income tax returns.

(ii) Prepares or assists others in the preparation of state or federal income tax returns for compensation.

(4) (a) It is unlawful for any person, including any individual, association, partnership, joint venture, or any employee or agent therefor, to fail to sign any state income tax return, or to fail to include his name, address, and social security number or preparer identifica-

tion number issued under 26 U.S.C. 6109 on any state income tax return, which he prepares for another for compensation, or which he assists another in the preparation of for compensation.

(b) It is unlawful for any corporation to fail to include its name and address on any state income tax return which it prepares for another for compensation, or which it assists another in the preparation of for compensation.

(5) A person who renders mere mechanical assistance in the preparation of a return, declaration, statement, or other document is not considered, for the purposes of this section, as preparing the return, declaration, statement or other document.

[48-603B, added 1973, ch. 285, sec. 4, p. 601; am. 1993, ch. 102, sec. 2, p. 257; am. 2000, ch. 26, sec. 2, p. 46.]

48-603C. UNCONSCIONABLE METHODS, ACTS OR PRACTICES. (1) Any unconscionable method, act or practice in the conduct of any trade or commerce violates the provisions of this chapter whether it occurs before, during, or after the conduct of the trade or commerce.

(2) In determining whether a method, act or practice is unconscionable, the following circumstances shall be taken into consideration by the court:

(a) Whether the alleged violator knowingly or with reason to know, took advantage of a consumer reasonably unable to protect his interest because of physical infirmity, ignorance, illiteracy, inability to understand the language of the agreement or similar factor;

(b) Whether, at the time the consumer transaction was entered into, the alleged violator knew or had reason to know that the price grossly exceeded the price at which similar goods or services were readily available in similar transactions by similar persons, although price alone is insufficient to prove an unconscionable method, act or practice;

(c) Whether the alleged violator knowingly or with reason to know, induced the consumer to enter into a transaction that was excessively one-sided in favor of the alleged violator;

(d) Whether the sales conduct or pattern of sales conduct would outrage or offend the public conscience, as determined by the court.

[48-603C, added 1990, ch. 273, sec. 3, p. 769.]

48-603D. UNFAIR TELEPHONE SERVICES -- UNORDERED GOODS AND SERVICES -- DISCLOSURE TO CONSUMERS. (1) As used in this section:

(a) "Telecommunications provider" means a person that provides telecommunications service.

(b) "Telecommunications service" means the offering for sale of the conveyance of voice, data or other information at any frequency over any part of the electromagnetic spectrum. Telecommunications service does not include cable television service or broadcast service.

(c) "Telecommunications service agreement" means a contract between the telecommunications provider and a consumer for telecommunications service that is provided to the consumer on a continuing or periodic basis. The term includes an oral, written, or electronically recorded contract, and includes any material amendment to an existing contract.

(2) (a) Section [48-605](#), Idaho Code, notwithstanding, it is unlawful for a telecommunications provider to request a change in a consumer's local

exchange or interexchange carrier without the consumer's verified consent.

(b) For purposes of subsection (2) (a) of this section:

(i) It is the responsibility of the telecommunications provider requesting a change in a telephone service subscriber's local exchange or interexchange carrier to verify that the consumer has authorized the change. A telecommunications provider that does not verify a consumer's change in his or her local exchange or interexchange carrier in accordance with the verification procedures, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, as those procedures are from time to time amended, commits an unlawful practice within the meaning of this act. A telephone company, wireless carrier or telecommunications carrier providing local exchange service who has been requested by another telecommunications provider to process a change in a consumer's carrier is only liable under this section if it knowingly participates in processing a requested change that is unauthorized or not properly verified; and

(ii) Compliance with applicable federal verification procedures is a complete defense to an allegation of consumer fraud under subsection (2) (a) of this section.

(3) (a) Section [48-605](#), Idaho Code, notwithstanding, it is unlawful for a telecommunications provider to bill a consumer for goods or services that are in addition to the consumer's telecommunications services without the consumer's authorization adding the goods or services to the consumer's service order.

(b) For purposes of subsection (3) (a) of this section, a telephone company or telecommunications carrier providing billing services for another telecommunications provider is only liable under this section if it knowingly participates in billing a consumer for goods or services without the consumer's authorization for the addition of those goods or services to the consumer's service order.

(4) (a) A telecommunications provider shall be solely responsible for providing written notice to a consumer who has agreed to enter into a telecommunications service agreement with the telecommunications provider.

(b) The notice shall clearly and conspicuously disclose to the consumer that the consumer's local exchange or interexchange carrier has been changed. The notice shall also advise the consumer that the consumer may change back to the previous carrier or select a new carrier by calling the previous carrier or the consumer's preferred carrier. The notice shall also provide the consumer with a toll-free number to call for further information.

(c) The notice shall be sent on or before the fifteenth day after the consumer enters into the telecommunications service agreement, or on or before the day the telecommunications provider first bills the consumer under the agreement, whichever is later.

(d) The notice must be a separate document sent for the sole purpose of advising the consumer of his or her entering into a telecommunications service agreement. The notice shall also not be combined with any sweepstakes entry form in the same document or other like inducement.

(e) The sending of this notice shall not constitute a defense to a charge that a consumer did not consent to enter into a telecommunications service agreement or that the consumer's consent was verified according to federal law.

(f) Compliance with the notification requirements, if any, adopted by the federal communications commission under the telecommunications act of 1996, including subpart K of 47 CFR 64, shall be deemed to be compliance with this subsection.

(g) A consumer who selects a different carrier within three (3) days after receiving the notice under subsection (4) (a) of this section may not be charged a cancellation charge or disconnect fee unless the consumer has more than five (5) telephone lines and has entered into a written agreement which specifies such charges and fees, and the telecommunications provider has complied with the verification procedures under subsection (2) (b) of this section.

[48-603D, added 1998, ch. 274, sec. 1, p. 904.]

48-603E. UNFAIR BULK ELECTRONIC MAIL ADVERTISEMENT PRACTICES. (1) For purposes of this section, unless the context otherwise requires:

(a) "Bulk electronic mail advertisement" means an electronic message, containing the same or similar advertisement, which is contemporaneously transmitted to two (2) or more recipients, pursuant to an internet or intranet computer network.

(b) "Computer network" means a set of related, remotely connected devices and communication facilities, including two (2) or more computers, with the capability to transmit data among them through communication facilities.

(c) "Interactive computer service" means an information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the internet, and such systems operated or services offered by a library or an educational institution.

(d) "Recipient" means a person who receives any bulk electronic mail advertisements.

(2) Any person who uses an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement shall provide an electronic mail address readily identifiable in the bulk electronic mail advertisement to which the recipient may send a request for declining such mail.

(3) It is unlawful for a person to use an interactive computer service to initiate or cause the sending or transmittal of any bulk electronic mail advertisement to any recipient that the sender knows, or has reason to know, engages in any of the following:

(a) Uses the name of a fictitious name of a third party in the return address field without the permission of the third party.

(b) Misrepresents any information in identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(c) Fails to contain information identifying the point of origin of the transmission path of the bulk electronic mail advertisement.

(d) Sends or transmits, at any time after five (5) business days of a declination, any bulk electronic mail advertisement to a recipient who

provided the sender with a request declining the receipt of such advertisements.

(4) Pursuant to section [48-608](#), Idaho Code, a recipient that receives a bulk electronic mail advertisement in violation of this section may bring an action to recover actual damages. The recipient, in lieu of actual damages, may elect to recover from the person transmitting or causing to be transmitted such bulk electronic mail advertisement the greater of one hundred dollars (\$100) for each bulk electronic mail advertisement transmitted to the recipient in violation of this section or one thousand dollars (\$1,000).

(5) This section does not apply to any of the following:

(a) A person, including an interactive computer service, who provides users with access to a computer network, and as part of that service, transmits electronic mail on behalf of those users, unless such person transmits bulk electronic mail advertisements on behalf of those users which the person knows, or should have known, were transmitted in violation of this section.

(b) Electronic mail advertisements which are accessed by the recipient from an electronic bulletin board.

(c) A person who provides users with access at no charge to electronic mail, including receiving and transmitting bulk electronic mail advertisements, and, as a condition of providing such access, requires such users to receive unsolicited advertisements.

(d) The transmission of bulk electronic mail advertisements from an organization or similar entity to the members of such organization.

(6) An interactive computer service is not liable under this section for an action voluntarily taken in good faith to block or prevent the receipt or transmission through its service of any bulk electronic mail advertisement which is reasonably believed to be in violation of this section.

[48-603E, added 2000, ch. 423, sec. 1, p. 1373.]

48-603F. MORTGAGE LOAN MODIFICATION FEES. (1) For purposes of this section, unless the context otherwise requires:

(a) "Fee" means any item of value including, but not limited to, goods or services.

(b) "Loan modification activities" is defined in section [26-31-201](#)(3), Idaho Code.

(2) Charging or collecting any fee in connection with mortgage loan modification activities shall constitute a violation of the Idaho consumer protection act, unless the person charging or collecting such fees is licensed pursuant to [chapter 20, title 54](#), Idaho Code, or licensed, exempt or excluded from licensing pursuant to part 2 or 3, [chapter 31, title 26](#), Idaho Code.

[48-603F, added 2011, ch. 323, sec. 3, p. 944.]

48-604. INTENT OF LEGISLATURE -- ATTORNEY GENERAL TO MAKE RULES AND REGULATIONS. (1) It is the intent of the legislature that in construing this act due consideration and great weight shall be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended; and

(2) The attorney general may make rules and regulations interpreting the provisions of this act. Such rules and regulations shall not be in-

consistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section 5(a)(1) of the federal trade commission act (15 U.S.C. 45(a)(1)), as from time to time amended. Rules and regulations shall be promulgated as provided in [chapter 52, title 67](#), Idaho Code.

[48-604, added 1971, ch. 181, sec. 5, p. 847; am. 1973, ch. 285, sec. 5, p. 601.]

48-605. EXCEPTIONS TO CHAPTER. Nothing in this act shall apply to:

(1) Actions or transactions permitted under laws administered by the state public utility commission or other regulatory body or officer acting under statutory authority of this state or the United States.

(2) Acts done by publishers, broadcasters, printers, retailers, or their employees, in the publication or dissemination of an advertisement in good faith on the basis of information or material supplied by others and without knowledge or reason to know of the misleading or deceptive character of such advertisement or the information or material furnished.

(3) Persons subject to [chapter 13, title 41](#), Idaho Code (sections [41-1301](#) through [41-1327](#)), defining, and providing for the determination by the director of the department of insurance of unfair methods of competition or unfair or deceptive acts or practices in the business of insurance.

[48-605, added 1971, ch. 181, sec. 6, p. 847.]

48-606. PROCEEDINGS BY ATTORNEY GENERAL. (1) Whenever the attorney general has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this chapter to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the state against such person:

(a) To obtain a declaratory judgment that a method, act or practice violates the provisions of this chapter;

(b) To enjoin any method, act or practice that violates the provisions of this chapter by issuance of a temporary restraining order or preliminary or permanent injunction, upon the giving of appropriate notice to that person as provided by the Idaho rules of civil procedure;

(c) To recover on behalf of consumers actual damages or restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(d) To order specific performance by the violator;

(e) To recover from the alleged violator civil penalties of up to five thousand dollars (\$5,000) per violation for violation of the provisions of this chapter; and

(f) To recover from the alleged violator reasonable expenses, investigative costs and attorney's fees incurred by the attorney general.

(2) The action may be brought in the district court of the county in which such person resides or has his principal place of business, or with consent of the parties, may be brought in the district court of Ada county. If the person does not reside in or have a principal place of business in this state, the action may be brought in any district court in this state. The said courts are authorized to issue temporary restraining orders or preliminary or permanent injunctions to restrain and prevent violations of the provisions of this chapter, and such injunctions shall be issued without bond.

(3) Unless the attorney general finds in writing that the purposes of this chapter will be substantially and materially impaired by delay in instituting legal proceedings, he shall, before initiating any legal proceedings as provided in this section, give notice in writing that such proceedings are contemplated to the person against whom proceedings are contemplated and allow such person a reasonable opportunity to appear before the attorney general and execute an assurance of voluntary compliance or a consent judgment as in this chapter provided.

(4) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice alleged to be a violation of the provisions of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The consent judgment may also include a stipulation for civil penalties to be paid, not in excess of five thousand dollars (\$5,000) per alleged violation; a stipulation to pay to consumers actual damages or to allow for restitution of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter; and/or a stipulation for specific performance. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all penalties provided by law therefor, including the penalties set forth in section [48-615](#), Idaho Code.

(5) All penalties, costs and fees recovered by the attorney general shall be remitted to the consumer protection fund which is hereby created in the state treasury. Moneys in the fund may be expended pursuant to legislative appropriation and shall be used for the furtherance of the attorney general's duties and activities under this chapter. At the beginning of each fiscal year, those moneys in the consumer protection fund which exceed the current year's appropriation plus any residual encumbrances made against prior years' appropriations by fifty percent (50%) or more shall be transferred to the general fund.

(6) Any moneys collected by the attorney general as trustee for distributions to injured consumers shall be deposited in the state treasury until such time as payment is made to an individual or individuals for purposes of restitution or pursuant to a court approved cy pres distribution.

[48-606, added 1971, ch. 181, sec. 7, p. 847; am. 1973, ch. 285, sec. 6, p. 601; am. 1990, ch. 273, sec. 4, p. 769; am. 1991, ch. 243, sec. 1, p. 593; am. 1993, ch. 102, sec. 3, p. 258; am. 2001, ch. 61, sec. 1, p. 113.]

48-607. ADDITIONAL RELIEF BY COURT AUTHORIZED. In any action brought by the attorney general, wherein the state prevails, the court shall, in addition to the relief granted pursuant to section [48-606](#), Idaho Code, award reasonable costs, investigative expenses and attorney's fees to the attorney general. These costs and fees shall be remitted to the consumer protection account created in section [48-606](#), Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. In addition, the court may:

(1) Make such orders or judgments as may be necessary to prevent the use or employment by a person of any method, act or practice declared to be a violation of the provisions of this chapter;

(2) Make such orders or judgments as may be necessary to compensate any consumers for actual damages sustained or to provide for restitution to any consumers of money, property or other things received from such consumers in connection with a violation of the provisions of this chapter;

(3) Make such orders or judgments as may be necessary to carry out a transaction in accordance with consumers' reasonable expectations;

(4) Appoint a master, receiver or escrow agent to oversee assets or order sequestration of assets whenever it shall appear that the defendant threatens or is about to remove, conceal or dispose of property to the damage of persons to whom restoration would be made under this subsection and assess the expenses of a master, receiver or escrow agent against the defendant;

(5) Revoke any license or certificate authorizing that person to engage in business in this state;

(6) Enjoin any person from engaging in business in this state; and/or

(7) Grant other appropriate relief.

[48-607, added 1971, ch. 181, sec. 8, p. 847; am. 1973, ch. 285, sec. 7, p. 601; am. 1990, ch. 273, sec. 5, p. 771.]

48-608. LOSS FROM PURCHASE OR LEASE -- ACTUAL AND PUNITIVE DAMAGES. (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act or practice declared unlawful by this chapter, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater; provided, however, that in the case of a class action, the class may bring an action for actual damages or a total for the class that may not exceed one thousand dollars (\$1,000), whichever is the greater. Any such person or class may also seek restitution, an order enjoining the use or employment of methods, acts or practices declared unlawful under this chapter and any other appropriate relief which the court in its discretion may deem just and necessary. The court may, in its discretion, award punitive damages and may provide such equitable relief as it deems necessary or proper in cases of repeated or flagrant violations.

(2) An elderly person or a disabled person who brings an action under subsection (1) of this section shall, in addition to the remedies available under subsection (1) of this section, recover from the offending party an enhanced penalty of fifteen thousand dollars (\$15,000) or treble the actual damages, whichever is greater.

(a) In order to recover the enhanced penalty, the court must find that the offending party knew or should have known that his conduct was perpetrated against an elderly or disabled person and that his conduct caused one (1) of the following:

(i) Loss or encumbrance of the elderly or disabled person's primary residence;

(ii) Loss of more than twenty-five percent (25%) of the elderly or disabled person's principal monthly income;

(iii) Loss of more than twenty-five percent (25%) of the funds belonging to the elderly or disabled person set aside by the elderly or disabled person for retirement or for personal or family care or maintenance;

(iv) Loss of more than twenty-five percent (25%) of the monthly payments that the elderly or disabled person receives under a pension or retirement plan; or

(v) Loss of assets essential to the health or welfare of the elderly or disabled person.

(b) If the court orders restitution under subsection (1) of this section for a pecuniary or monetary loss suffered by an elderly or disabled person, the court shall require that the restitution be paid by the offending party before he pays the enhanced penalty imposed by this subsection.

(c) In this subsection:

(i) "Disabled person" means a person who has an impairment of a physical, mental or emotional nature that substantially limits at least one (1) major life activity.

(ii) "Elderly person" means a person who is at least sixty-two (62) years of age.

(iii) "Major life activity" means self-care, walking, seeing, hearing, speaking, breathing, learning, performing manual tasks or being able to be gainfully employed.

(3) An action brought under subsection (1) of this section may be brought in the county in which the person against whom it is brought resides, has his principal place of business, or is doing business, or in the county where the transaction or any substantial portion thereof occurred.

(4) Upon commencement of any action brought under this section, the clerk of the court shall, for informational purposes only, mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the attorney general.

(5) Costs shall be allowed to the prevailing party unless the court otherwise directs. In any action brought by a person under this section, the court shall award, in addition to the relief provided in this section, reasonable attorney's fees to the plaintiff if he prevails. The court in its discretion may award attorney's fees to a prevailing defendant if it finds that the plaintiff's action is spurious or brought for harassment purposes only.

(6) Any permanent injunction, judgment or order of the court made under section [48-606](#) (1) through (3) or section [48-607](#), Idaho Code, shall be admissible as evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by this chapter.

[48-608, added 1971, ch. 181, sec. 9, p. 847; am. 1973, ch. 285, sec. 8, p. 601; am. 1990, ch. 273, sec. 6, p. 771; am. 2008, ch. 257, sec. 1, p. 749.]

48-610. VOLUNTARY COMPLIANCE -- DISTRICT COURT APPROVAL. (1) In the administration of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of the provisions of this chapter from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business or of the district court of Ada County and shall be deemed an order of the court enforceable by contempt proceedings.

(2) Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose.

(3) The assurance of voluntary compliance shall provide for the discontinuance by the person entering into the same of any method, act or practice alleged to be a violation of this chapter, and it may include a stipulation for the payment by such person of reasonable expenses, investigative costs and attorney's fees incurred by the attorney general. The recovered expenses, costs and fees shall be remitted to the consumer protection account created in section [48-606](#), Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under this chapter. The assurance may also include: a stipulation for payment to consumers of actual damages or for restitution of money, property, or other things received from consumers in connection with a violation of the provisions of this chapter; and a stipulation for specific performance.

(4) A violation of such assurance of voluntary compliance shall prima facie establish that the person subject thereto knows, or in the exercise of due care should know, that he has in the past violated or is violating the provisions of this chapter.

(5) Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest, pursuant to section [48-606](#), Idaho Code.

[48-610, added 1971, ch. 181, sec. 11, p. 847; am. 1973, ch. 285, sec. 9, p. 601; am. 1990, ch. 273, sec. 7, p. 772.]

48-611. INVESTIGATIVE DEMAND BY ATTORNEY GENERAL -- REPORT REQUIRED. (1) When the attorney general has reason to believe that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, he may execute in writing and cause to be served upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation. The return date in said investigative demand shall be not less than twenty (20) days after serving of the demand.

(2) At any time before the return date specified in an investigative demand, or within twenty (20) days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the district court of the county where the person served with the demand resides or has his principal place of business or in the district court in Ada County.

[48-611, added 1971, ch. 181, sec. 12, p. 847; am. 1993, ch. 102, sec. 4, p. 260.]

48-612. ADDITIONAL POWERS OF ATTORNEY GENERAL. To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general, in addition to other powers conferred upon him by this chapter, may issue subpoenas to any person and conduct hearings in aid of any investi-

gation or inquiry; provided that information obtained pursuant to the powers conferred in this chapter shall be subject to disclosure according to [chapter 1, title 74](#), Idaho Code.

[48-612, added 1971, ch. 181, sec. 13, p. 847; am. 1990, ch. 213, sec. 67, p. 535; am. 1990, ch. 273, sec. 8, p. 773; am. 1991, ch. 243, sec. 2, p. 594; am. 2015, ch. 141, sec. 124, p. 473.]

48-613. SERVICE OF NOTICE. Service of any notice, demand or subpoena under this act shall be made personally within this state, but if such cannot be obtained, substituted service therefor may be made in the following manner:

- (1) Personal service thereof without this state; or
- (2) The mailing thereof by registered or certified mail to the last known place of business, residence or abode within or without this state or such person for whom the same is intended; or
- (3) As to any person other than a natural person, in the manner provided in the Idaho rules of civil procedure as if a complaint which institutes a civil proceeding had been filed.

[48-613, added 1971, ch. 181, sec. 14, p. 847.]

48-614. FAILURE TO OBEY ATTORNEY GENERAL -- APPLICATION TO DISTRICT COURT. (1) If any person fails or refuses to file any statement or report, or obey any subpoena or investigative demand issued by the attorney general, the attorney general may, after notice, apply to a district court of the county in which the person resides or has a principal place of business, or if the person does not reside in or have a principal place of business in this state, the attorney general may apply to any district court in this state and, after hearing thereon, request an order:

- (a) Ordering such person to file such statement or report, or to comply with the subpoena or investigative demand issued by the attorney general;
 - (b) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; and
 - (c) Granting such other relief as may be required, until the person files the statement or report, or obeys the subpoena or investigative demand.
- (2) The court shall award the prevailing party reasonable expenses and attorney fees incurred in obtaining an order under the provisions of this section if the court finds that the attorney general's request for an order under this section or a person's resistance to filing any statement or report, or obeying any subpoena or investigative demand, was without a reasonable basis in fact or law.
- (3) Any disobedience of any final order entered under the provisions of this section by any court shall be punished as a contempt thereof. Contempt penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section [48-606](#), Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

[48-614, added 1971, ch. 181, sec. 15, p. 847; am. 1990, ch. 273, sec. 9, p. 773; am. 1991, ch. 243, sec. 4, p. 594; am. 1993, ch. 102, sec. 5, p. 260.]

48-615. VIOLATION OF INJUNCTION -- CIVIL PENALTY. Any person who violates the terms of an injunction issued or consent order entered into pursuant to section [48-606](#), Idaho Code, or an order entered into pursuant to section [48-614](#), Idaho Code, shall forfeit and pay to the state a civil penalty of not more than ten thousand dollars (\$10,000) per violation, the amount of the penalty to be determined by the district court issuing the injunction. For the purposes of this section, the district court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for recovery of civil penalties. Said civil penalties sued for and recovered by the attorney general shall be remitted to the consumer protection account created in section [48-606](#), Idaho Code, and shall be used for the furtherance of the attorney general's duties and activities under the provisions of this chapter.

[48-615, added 1971, ch. 181, sec. 16, p. 847; am. 1990, ch. 273, sec. 10, p. 774; am. 1993, ch. 102, sec. 6, p. 261.]

48-616. FORFEITURE OF CORPORATE FRANCHISE. Upon petition by the attorney general, the district court of the county in which the principal place of business of the corporation is located may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of any injunction issued under section [48-606](#), Idaho Code.

[48-616, added 1971, ch. 181, sec. 17, p. 847; am. 1993, ch. 102, sec. 7, p. 261.]

48-617. LOCAL LAW ENFORCEMENT OFFICIALS -- DUTIES. It shall be the duty of local law enforcement officials to provide the attorney general such assistance as the attorney general may request in the investigation, commencement and prosecution of actions pursuant to this chapter.

[48-617, added 1971, ch. 181, sec. 18, p. 847; am. 1990, ch. 273, sec. 11, p. 774.]

48-618. CONSTRUCTION OF CHAPTER. This act is to be construed uniformly with federal law and regulations. In any action instituted under this act it shall be an absolute defense to show the challenged practices are subject to and comply with statutes administered by the federal trade commission, or any duties, regulations or decisions interpreting such statutes.

[48-618, added 1971, ch. 181, sec. 18, p. 847.]

48-619. LIMITATION OF ACTION. No private action may be brought under this act more than two (2) years after the cause of action accrues.

[48-619, added 1971, ch. 181, sec. 20, p. 847; am. 1997, ch. 127, sec. 1, p. 380.]